

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHARLES V. FARNSWORTH,

Plaintiff,

v.

PIERCE COUNTY JAIL, *et al*,

Defendants.

Case No. C07-5036RBL-KLS

REPORT AND  
RECOMMENDATION TO DENY  
APPLICATION TO PROCEED *IN*  
*FORMA PAUPERIS*

Noted for April 6, 2007

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff has filed a civil rights complaint under 42 U.S.C. § 1983 and an application to proceed *in forma pauperis*. To file a complaint and initiate legal proceedings, plaintiff must pay a filing fee of \$350.00 or file a proper application to proceed *in forma pauperis*.

Because he has had three prior civil actions dismissed as frivolous or for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2), plaintiff now is prohibited by 28 U.S.C. § 1915(g) from proceeding *in forma pauperis* in this action. Accordingly, the Court should deny plaintiff's application to proceed *in forma pauperis*.

DISCUSSION

The Court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper

1 affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an  
 2 application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*,  
 3 375 U.S. 845 (1963).

4 Pursuant to 28 U.S.C. § 1915(e)(2), the Court must dismiss a case “at any time if the court  
 5 determines” the action: (a) “is frivolous or malicious”; (b) “fails to state a claim on which relief may be  
 6 granted”; or (c) “seeks monetary relief against a defendant who is immune from such relief.” In addition,  
 7 under 28 U.S.C. § 1915(g):

8 In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or  
 9 proceeding under this section if the prisoner has, on 3 or more prior occasions, while  
 10 incarcerated or detained in any facility, brought an action or appeal in a court of the  
 11 United States that was dismissed on the grounds that it is frivolous, malicious, or fails to  
 state a claim upon which relief may be granted, unless the prisoner is under imminent  
 danger of serious physical injury.

12 Thus, “[t]he plain language of § 1915(g) denies” *in forma pauperis* status to those prisoners to whom the  
 13 above circumstances apply. Rodriguez v. Cook, 169 F.3d 1176, 1178 (9<sup>th</sup> Cir. 1999).

14 It appears plaintiff has had at least three lawsuits dismissed that have been counted as a dismissal  
 15 for purposes of 28 U.S.C. § 1915(g). *See* Farnsworth v. Pierce Co., et al., C05-5177RBL (W.D. Wash.);  
 16 Farnsworth v. Carter, C05-5139FDB (W.D. Wash.); Farnsworth v. Glad, et al., C94-774 (C.D. Utah); *see*  
 17 *also* Farnsworth v. Pierce Co. Sheriff, et al., C04-5780RBL (W.D. Wash.) (Dkt. #43). Further, plaintiff  
 18 has made no showing that he is under imminent danger of serious physical injury.

### 19 CONCLUSION

20 Because plaintiff already has at least three prior civil actions that have been dismissed as frivolous  
 21 or for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2), the undersigned recommends the Court  
 22 deny his application to proceed *in forma pauperis* in this case under 28 U.S.C. § 1915(g). Accordingly,  
 23 the undersigned also recommends the Court dismiss plaintiff’s complaint unless he pays the required  
 24 \$350.00 filing fee **within thirty (30) days** of the Court’s order.

25 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) 72(b),  
 26 the parties shall have ten (10) days from service of this Report and Recommendation to file written  
 27 objections thereto. *See also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those  
 28 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit  
 imposed by Fed. R. Civ. P. 72(b), the Clerk is directed to set this matter for consideration on **April 6**,

1 **2007**, as noted in the caption.

2 Dated this 15th day of March, 2006.

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6 Karen L. Strombom  
7 United States Magistrate Judge  
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